

ENTERED

April 19, 2023

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SEAN SHAW,

Plaintiff,

v.

MESSINA HOF WINE CELLARS, INC.,

Defendant.

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CIVIL CASE NO. H-22-4433

ORDER

Messina Hof Cellars operates a vineyard, winery, and restaurant. Messina hired Sean Shaw as the restaurant's chef and later fired him for misconduct. Shaw has sued Messina under the Fair Labor Standards Act to recover overtime pay allegedly due. Messina has moved to dismiss on the basis that Shaw has failed to state a claim on which relief could be granted. (Docket Entry No. 8 ¶ 6). Messina also argues that extrinsic evidence, referred to in Shaw's complaint, proves that Shaw held a managerial position exempt from FLSA requirements. (*Id.* ¶ 14).

After Messina filed its motion to dismiss, Shaw filed an amended complaint. (Docket Entry No. 10). The amended complaint did not adopt or incorporate the original pleading. Under these circumstances, the amended complaint will generally moot a motion to dismiss directed toward to the original pleading. *Griffin v. Am. Zurich Ins. Co.*, 697 F. App'x 793, 797 (5th Cir. 2017) ("Once filed, that amended complaint rendered all earlier motions . . . moot."); *Rodriguez v. Xerox Bus. Servs., LLC*, No. EP-16-CV-41-DB, 2016 WL 8674378, at *1 (W.D. Tex. June 16, 2016) (collecting cases); *see also King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) ("An amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading."). But "[i]f some of the defects raised in the original motion remain in the new pleading, the court simply

may consider the motion as being addressed to the amended pleading.” CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1476 (3d ed. April 2023).

Here, the amended complaint contains additional allegations about the number of hours Shaw worked in excess of forty hours a week. (Docket Entry No. 10 ¶¶ 4.12–13). These allegations address the part of Messina’s motion seeking dismissal for failure to state a claim. (*See* Docket Entry No. 8 ¶¶ 11–13).

Based on the amended complaint, the court denies Messina’s motion to dismiss the original complaint as moot. This denial is without prejudice to challenges to the amended complaint or to a summary judgment motion presenting similar arguments. Messina must file a response to the amended complaint no later than **May 12, 2023**.

SIGNED on April 19, 2023, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal". The signature is fluid and cursive, with a large, sweeping "L" and "R".

Lee H. Rosenthal
United States District Judge